

# **EXHIBIT 8**

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1 UNITED STATES DISTRICT COURT FOR THE  
2 NORTHERN DISTRICT OF CALIFORNIA  
3

4 ALICIA HERNANDEZ, EMMA WHITE, )  
KEITH LINDNER, DEBORA GRANJA, TROY )  
5 FRYE, COSZETTA TEAGUE, IESHA BROWN,) )  
RUSSELL and BRENDA SIMONEAUX, JOHN )  
6 and YVONNE DEMARTINO, ROSE WILSON, )  
TIFFANIE HOOD, GEORGE and CYNDI )  
7 FLOYD, and DIANA TREVINO, )  
individually and on behalf of all )  
8 others similarly situated, )  
Plaintiffs, )  
9 )  
v. ) No. 3:18-CV-07354  
10 )  
WELLS FARGO & COMPANY, and WELLS )  
11 FARGO BANK, N.A., )  
Defendants. )  
12

13 DEPOSITION OF ROBERT FERGUSON

14 Taken on behalf of Plaintiffs

15 \* \* \*

16 BE IT REMEMBERED THAT, pursuant to Federal  
17 Rules of Civil Procedure, the deposition of ROBERT  
18 FERGUSON was taken before Heather L. Fairless, a  
19 Registered Professional Reporter and Certified Shorthand  
20 Reporter, on Wednesday, July 10, 2019, commencing at the  
21 hour of 9:40 a.m., in the law offices of LANE POWELL PC,  
22 601 S.W. 2nd Avenue, Suite 2100, Portland, Oregon.

23 \* \* \*  
24  
25

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10:22:24 1 cause distractions from your routine manner of handling  
2 your business matters. Our trained professionals are  
3 available to assist you in bringing your loan current.  
4 We will work with you to determine the best option

10:22:34 5 available to you." Do you see that?

6 A I do.

7 Q And so let's focus on that second sentence, "Our  
8 trained professionals are available to assist you in  
9 bringing your loan current." I have seen -- I think we

10:22:51 10 will get to it later -- but a job title, something to  
11 the effect of home preservation specialist. Is that a  
12 job you are familiar with?

13 A Yes.

14 Q And is that the trained professionals that are  
10:23:02 15 being referenced in this letter?

16 A This would be talking to the customer from a  
17 collection perspective, but if the best option to help  
18 the customer was to get them in the loss mitigation  
19 track, that is where they would go.

10:23:22 20 Q So the home preservation specialist employees are  
21 within the loss mitigation group?

22 A Correct.

23 Q All right. And then when it says available to  
24 assist you in bringing your loan current, that would  
10:23:38 25 mean curing the default?

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10:23:40 1 A Yes.

2 Q And then I think you mentioned this a number of  
3 times, but the last sentence there says, "We will work  
4 with you to determine the best option available to you,"  
10:23:50 5 and I take it that is a reference that there is many  
6 ways that process -- many roads that process can go down  
7 once the default occurs; is that right?

8 A That is correct.

9 Q And in terms of the -- well, one of the roads you  
10:24:11 10 have mentioned is loss mitigation. Correct?

11 A Yes.

12 Q What are the other pathways that that can go down  
13 from the moment of default?

14 A It is if the collection team member can make a  
10:24:32 15 repayment plan with the borrower that meets their  
16 ability to pay, that would be one option or outcome. If  
17 during the conversation the borrower indicates that they  
18 are interested in liquidation, again, that would go to  
19 loss mitigation, but the focus would be more on a short  
10:24:58 20 sale or a deed in lieu. If they said that they can't  
21 make their payments and there is no way for them to make  
22 up the past due while keeping current with their current  
23 payments but they are interested in retention, then that  
24 is -- it would go down the loss mitigation path for  
10:25:21 25 retention. So at this point, that is what I can think

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10:27:26 1 some of them, I think -- I don't actually know without  
2 looking at the terms.

3 Q All right. So, again, looking at this language in  
4 the third sentence of the second paragraph, "We will  
10:27:56 5 work with you to determine the best option available to  
6 you," one option would be payment in full and cure the  
7 default?

8 A Yes, one option would be that.

9 Q Second option would be a repayment plan where that  
10:28:11 10 is repaid in full and default is cured over a period of  
11 time?

12 A Correct.

13 Q Third option would be they cure the default by  
14 agreeing to give up their home either through a short  
10:28:26 15 sale or a deed in lieu of foreclosure?

16 MS. SCAVO: Objection to form.

17 THE WITNESS: That would be -- that would  
18 take additional review, but that is one pathway that is  
19 available at that point.

10:28:38 20 Q BY MR. PAUL: Okay. And we will talk about the  
21 steps in between as well, but I just want to get the  
22 roads that I need to cover today. And then I have as a  
23 fourth option retention, which is, again, handled by  
24 loss mitigation and is working with the borrowers  
10:28:57 25 through some option to retain their home?

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10:29:00 1 A Correct.

2 Q And I take it a loan modification would fall  
3 within that fourth option?

4 A Yes.

10:29:08 5 Q Are there other options other than a loan  
6 modification within retention?

7 A In the longer-term repayment plan than the shorter  
8 one that the collections team members would be able to  
9 offer.

10:29:34 10 Q Are there any other options to cure the default  
11 that you can think of?

12 A The borrower could sell the house not in a short  
13 sale if there was equity.

14 Q And that would involve paying off the entire  
10:29:59 15 mortgage?

16 A Correct.

17 Q And is there -- if in the response to this letter  
18 the borrower says, I am going to sell the house and pay  
19 the bank off, is there a -- which department handles  
10:30:16 20 that to oversee that process?

21 A It would just stay in -- if it stayed in default  
22 until the time of the sale, it would stay in  
23 collections.

24 Q And is there a set period of time that the  
10:30:33 25 collections department would give the borrower to get

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11:14:25 1 paragraph that is the third one down with three bullet  
2 points underneath it that begins "A loan modification:"  
3 Do you see that?

4 A I do.

11:14:35 5 Q So I think we talked about that a little bit  
6 generally this morning, but from a terminology  
7 perspective, this describes a loan modification as an  
8 agreement that changes the terms of your existing  
9 mortgage. Is that a definition that you would agree  
11:14:52 10 with?

11 A Yes.

12 Q All right. And in terms of the specifics of how  
13 that actually happens -- well, not how it happens, what  
14 is happening, if a loan modification is completed, does  
11:15:09 15 that result in a new mortgage?

16 A It results in a modification of the original  
17 mortgage, and in certain cases that modification then  
18 needs to be recorded with the county, so I guess you  
19 could technically say it is a new mortgage.

11:15:41 20 Q At what point in that process of a loan  
21 modification being agreed to is the default deemed  
22 cured?

23 MS. SCAVO: Objection to form.

24 THE WITNESS: In the modification process  
11:15:55 25 there is settlement, the settlement process, and that is

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11:15:58 1 when all the requirements of the modification have been  
2 met. The title on the home is clear. The terms of the  
3 modification are the same as what was contemplated in  
4 the trial plan. And when the new mortgage is settled or  
11:16:34 5 booked, the default would be cleared, and the past-due  
6 balance would go to zero.  
7 Q BY MR. PAUL: And that would be notated in the  
8 MSP?  
9 A Correct.  
11:16:49 10 Q So we started with this, but the important note at  
11 the bottom references the possibility that a foreclosure  
12 sale could be underway. But regardless of whether that  
13 sale has been scheduled and is underway, there is  
14 still -- well, let me ask it this way: Are there still  
11:17:15 15 letters going out telling the borrower you are in  
16 default still while the discussions of a loan  
17 modification are occurring?  
18 A Can you rephrase that? I am sorry.  
19 Q Sure. When a loss mitigation team member is  
11:17:35 20 assisting a borrower with modifying their loan, is the  
21 borrower still getting letters like we have looked at  
22 but maybe different forms saying you have missed a  
23 payment, you are in default?  
24 MS. SCAVO: Objection to form.  
11:17:53 25 THE WITNESS: The borrower could receive



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11:19:36 1 reason not to be applicable. That is one situation  
2 where I can think of.

3 Q All right. If the borrower is in the midst of  
4 performing on a trial period plan, is that mortgage  
11:19:59 5 still listed as in default on the mortgage service  
6 platform?

7 A It would be.

8 Q Is it the execution of the final loan modification  
9 that removes that mortgage from being in default on the  
11:20:19 10 mortgage service platform?

11 A If the modification is the way that the loan  
12 ceases to be in default, correct. The borrower can  
13 always -- if something changes with their situation and  
14 instead of going through the modification program, they  
11:20:36 15 paid the loan current or reinstate the loan. So I just  
16 didn't want it to only be the modification that could  
17 bring the loan current.

18 Q Oh, sure. So let's just break that out. I think  
19 I understand what you are saying, but at any point in a  
11:20:59 20 process the borrower, you know, lost their job, gets  
21 their job back and they have the money to pay, they can  
22 bring that loan current at any point in time and that  
23 would cure the default?

24 A Correct.

11:21:10 25 Q But let's leave that aside. Let's say that they

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11:21:13 1 need that loan modification and they are not otherwise  
2 bringing it current. The cure to that default is to  
3 execute the final loan modification. Correct?

4 MS. SCAVO: Objection to form.

11:21:30 5 THE WITNESS: The default would be cured  
6 if the loan modification goes through the final  
7 settlement process, thus curing the default.

8 Q BY MR. PAUL: And --

9 MR. PAUL: Well, what is the form  
11:21:48 10 objection?

11 MS. SCAVO: Sorry. Can you read -- Court  
12 Reporter, can you please read the question back? I am  
13 technically not supposed to say what the form objection  
14 is per Judge --

11:22:03 15 MR. PAUL: I know, but I think he says  
16 you can ask.

17 MS. SCAVO: Okay.

18 (The reporter read the record as  
19 requested.)

11:22:22 20 MS. SCAVO: Hypothetical.

21 Q BY MR. PAUL: So tell me what you mean by the  
22 settlement process.

23 A It is the bank's internal process by which they  
24 change the terms of the loan in the system of record

11:22:41 25 sometimes also produce a new deed of trust based on that

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11:22:57 1 modification to be recorded at the county. So it is the  
2 actual activities that take place to make a loan that  
3 was once in default now current with new terms according  
4 to the modification.

11:23:24 5 Q Which department handles settlement?

6 A It is part of loss mitigation.

7 Q And is that generally the same employee who is  
8 handling the loan modification process with the borrower  
9 or somebody different?

11:23:39 10 A Someone different.

11 Q All right. Going back to -- we started walking  
12 through the bullet points of Exhibit 346. The second  
13 bullet point says is not -- "A loan modification is not  
14 a refinance and there are no fees." Do you see that?

11:24:02 15 A I do.

16 Q And what is the distinction between a refinance of  
17 an existing mortgage and a loan modification?

18 A A refinance would constitute brand new money and  
19 would be handled by the front end of the bank, not the  
11:24:25 20 servicing department, so it would have to meet all the  
21 criteria of a new loan. Modification is just that, a  
22 modification of an existing note and deed of trust. So  
23 that is the main distinction.

24 Q In the mortgage service platform, does the loan  
11:24:55 25 get a new loan number when it is modified?

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11:24:58 1 A It does not.

2 Q But if it were a refinance it would?

3 A If Wells was the servicer of the new loan. The  
4 old loan would cease to exist and a new loan would  
11:25:11 5 appear on the servicing platform.

6 Q All right. Yeah, and that is a good distinction.  
7 I actually was -- I think I know the answer, but I was  
8 meaning if Wells is the servicer before and after it is  
9 still going to get a new loan number?

11:25:30 10 A It would get a new loan number.

11 Q And then the third bullet point says, "Brings your  
12 account up to date and may result in a lower, more  
13 manageable monthly payment." Let's break that out. The  
14 first part, bringing your account up to date, just means  
11:25:53 15 bringing the loan current?

16 A Correct.

17 Q And that would be the same as the language we have  
18 been using, curing the default?

19 A Yes.

11:26:02 20 Q And then the lower, more manageable payment, a  
21 loan modification may or may not result in a lower  
22 payment. Correct?

23 A That is correct.

24 Q There are some modifications where the principal  
11:26:18 25 and interest payment actually goes up because of accrued

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11:26:22 1 late fees and interest and whatever else but isn't --  
2 but amortizes that back late fees differently? Do you  
3 understand what I am saying?

4 MS. SCAVO: Objection to form.

11:26:37 5 THE WITNESS: There are different types  
6 of treatments in loss mitigation that could result in a  
7 same payment or even a slightly higher payment but also  
8 cures the default in the process, but it is based on the  
9 borrower's ability to pay the new modified terms.

11:27:08 10 Q BY MR. PAUL: What guidelines does a loss  
11 mitigation team member have to work with a borrower on a  
12 loan modification?

13 A The guidelines are going to be set by the investor  
14 requirements.

11:27:37 15 Q Are some of those investor requirements set forth  
16 in the service provider agreement?

17 A They -- investor -- the guidelines would be --  
18 well, the guidelines for Freddie and Fannie would be in  
19 the servicer's guidelines that are online -- the  
11:28:03 20 handbook, servicer's handbook, I should say. Any of the  
21 other investment portfolios would be -- the guidelines  
22 would be in the service agreement. FHA also has their  
23 specific guidelines for HUD, Rural Development, and VA  
24 loans.

11:28:31 25 Q And where are the investor requirements found for

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## 1 CERTIFICATE

2 I, HEATHER L. FAIRLESS, a Registered  
3 Professional Reporter, Washington Certified Court  
4 Reporter, and an Oregon Certified Shorthand Reporter,  
5 hereby certify that said witness personally appeared  
6 before me at the time and place set forth in the caption  
7 hereof; that at said time and place I reported in  
8 stenotype all testimony adduced and other oral  
9 proceedings had in the foregoing matter; that thereafter  
10 my notes were transcribed through computer-aided  
11 transcription under my direction; and that the foregoing  
12 pages constitute a full, true, and accurate record of  
13 all such testimony adduced and oral proceedings had, and  
14 of the whole thereof.

15 I further certify review of the transcript was  
16 reserved.

17 Witness my hand at Portland, Oregon, this 18th  
18 day of July, 2019.

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Heather L. Fairless  
Oregon CSR No. 10-0418  
Expires 9/30/20  
Washington CCR No. 2842  
Expires 10/01/19